



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,256 -	07/03/2003	Gerhard Reichert	1663-A1	4893

27542 7590 01/28/2005

SAND & SEBOLT
AEGIS TOWER, SUITE 1100
4940 MUNSON STREET, NW
CANTON, OH 44718-3615

EXAMINER

AMIRI, NAHID

ART UNIT	PAPER NUMBER
----------	--------------

3635

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,256

Applicant(s)

REICHERT, GERHARD

Examiner

Nahid Amiri

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 29-39 is/are pending in the application.
- 4a) Of the above claim(s) 9-12, 14-21 and 31-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 13, 29 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 15 July, 2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: exhibit (see attachment).

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention: **Group 1, Fig. 6; Group 2, Fig. 7A; Group 3, Fig. 7B; Group 4, Fig. 7C; Group 5, Fig. 7D; Group 6, Fig. 7E; Group 7, Fig. 10; Group 8, Fig. 11; Group 9, Figs. 12-16; Group 10, Fig. 17; Group 11, Figs. 18, 24; Group 12, Figs. 19-22; Group 13, Fig. 23; Group 14, Figs. 25-26; Group 15, Figs. 27-28; Group 16, Figs. 29-30; Group 17, Fig. 31; Group 18, Fig. 32; Group 19, Figs. 33-34; Group 20, Figs. 35-36; Group 21, Figs. 37-38.**

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 29 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mr. Fred H. Zollinger III on January 18, 2005 a provisional election was made to group I claims 1-8, 13 and 29-30 without traverse to prosecute

Art Unit: 3635

the invention apparatus of muntin bar element adapted to be disposed between opposed panes of glass in a glazing unit. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-12, 14-21 and 31-39 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Newly submitted claims 31-39 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims drawn to an insulating glazing unit.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 31-39 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Drawings

Figures 3-5 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 13 and 29 rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,732,517 Milikovsky.

In regard to claims 1, 13 and 29: Milikovsky discloses the claimed invention Fig. 2, column 2, lines 5-19, a spacer 10 adapted to be disposed between opposed panes of glass 8 and 12 in a glazing unit; the spacer 10 including a body B (see attachment) which formed from body material having opposed base walls W (see attachment) separated by the height of the body B; each base wall W adapted to be disposed adjacent an interior surface of the glass panes 8 and 12; the body B defining at least one insulating cavity C (see attachment) which insulating cavity C having a cross sectional area and being surrounded by the body B, column 2, lines 54-57, silicon adhesive used to seal the two panes 8 and 12 hermetically and the body material having a cross section which is greater than the cross sectional area of the insulating cavity.

In regard to claims 2-3: Milikovsky discloses the claimed invention Fig. 2, the body B defines a longitudinal direction and insulating cavity C extending continuous in the longitudinal direction.

In regard to claim 4: Milikovsky discloses the claimed invention Fig. 2, the spacer 10 wherein the body B defines a plurality of insulating cavities C, each of the insulating cavities C extending continuously in the longitudinal direction.

In regard to claims 5-6: Milikovsky discloses the claimed invention Fig. 2, the insulating cavities C are spaced from one another and each insulating cavity has a width, the space between the insulating cavities C being equal to the width of the either insulating cavity C.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3635

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-8, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milikovsky in view of 5,007,217 Glover et al.

In regard to claim 7: Milikovsky discloses the claimed invention except the body is fabricated from a foam material. Glover teaches Fig. 1, column 6, lines 59-62, the body of spacer 40 is formed from foam material. It would have been obvious to one of ordinary skill in the art at the time of invention was made to formed the body from foam material in order to have body with durability, good resilience, high temperature stability and cold temperature flexibility.

In regard to claim 8: Milikovsky discloses the claimed invention except the body includes a desiccant. Glover teaches column 7, lines 5-6 the foam including the desiccant. It would have been obvious to one of ordinary skill in the art at the time of invention was made to provide the foam with desiccant in order remove moisture vapor from body.

In regard to claims 30: Milikovsky discloses the claimed invention Fig. 2, column 2, lines 5-19, a spacer 10 adapted to be disposed between opposed panes of glass 8 and 12 in a glazing unit; the spacer 10 including a body B (see attachment) which formed from body material having opposed base walls W (see attachment) separated by the height of the body B; each base wall W adapted to be disposed adjacent an interior surface of the glass panes 8 and 12; the body B defining at least one insulating cavity C (see attachment) which insulating cavity C having a cross sectional area and being entirely surrounded by the body B, column 2, lines 54-57, silicon adhesive used to seal the two panes 8 and 12 hermetically and the body material having a cross section which is greater than the cross sectional area of the insulating cavity, the body B defining a longitudinal direction and insulating cavity C extending continuous in the longitudinal direction. Milikovsky does not disclose the body formed from resilient foam. Glover teaches Fig. 1, column 6, lines 59-62, the body of spacer 40 is formed from foam material. It would have been obvious to one of ordinary skill in the art at the time of invention was made to formed the body from foam material in order to have body with durability, good resilience, high temperature stability and cold temperature flexibility.

Art Unit: 3635

Response to Arguments

Applicant's arguments with respect to claims 1-8 and 13 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nahid Amiri whose telephone number is 703-305-4241. The examiner can normally be reached on 8:30-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nahid Amiri
Examiner
Art Unit 3635
January 18, 2005



**BRIAN E. GLESSNER
PRIMARY EXAMINER**

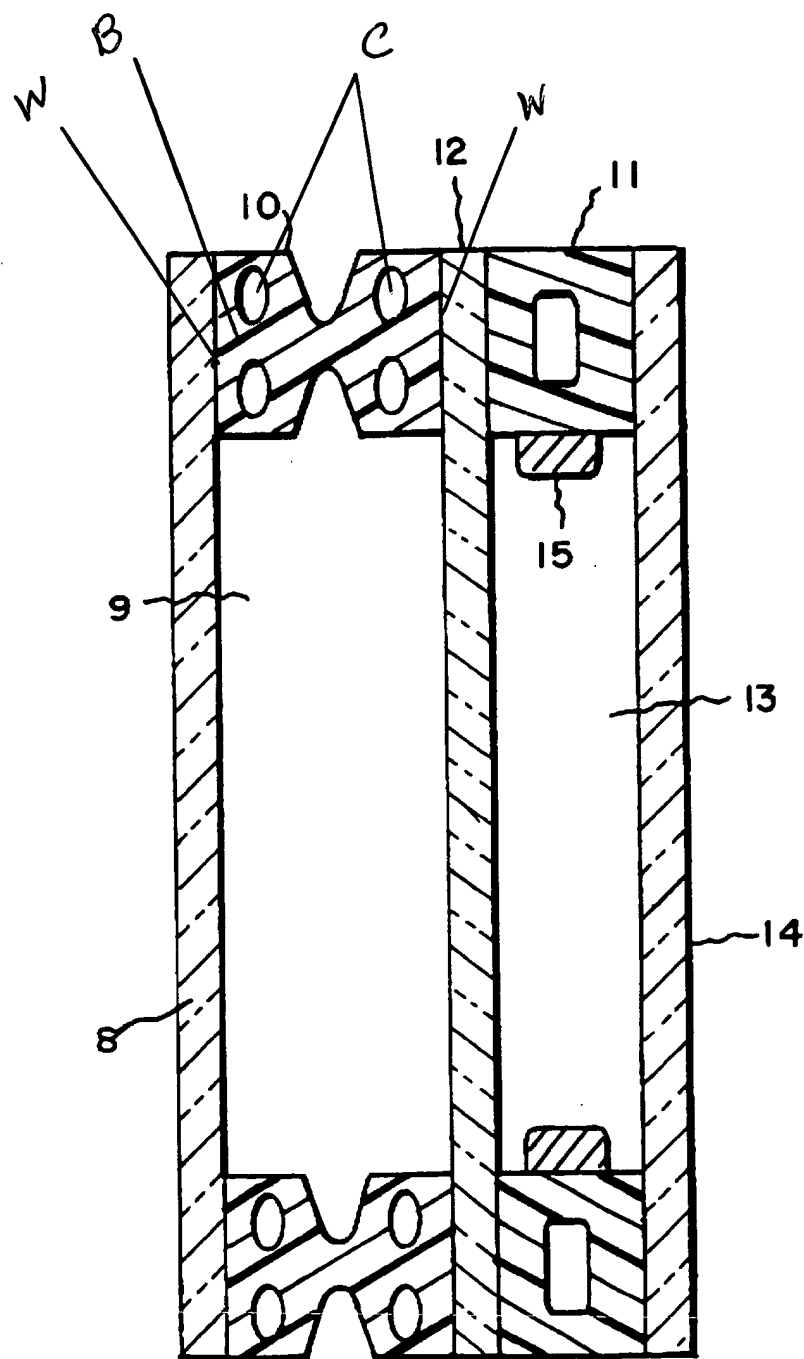


FIG. 2